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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JESUS ESTEVEZ,

12 Petitioner,

13 v.

14 UNITED STATES ATTORNEY'S  
15 OFFICE FOR THE SOUTHERN  
16 DISTRICT OF CALIFORNIA, et al.,

16 Respondents.  
17

Case No.: 15cv2941-AJB-JLB

**ORDER GRANTING  
RESPONDENTS' MOTION TO  
DISMISS  
(Doc. No. 35)**

18 Presently before the Court is Respondents United States Attorney's Office for the  
19 Southern District of California, Federal Bureau of Prison, Western Regional Office, and  
20 the United States Marshal for the Southern District of California's (collectively referred to  
21 as "Respondents") motion to dismiss Petitioner Jesus Estevez's ("Petitioner") Freedom of  
22 Information Act ("FOIA") and Privacy Act claims against nine individual respondents.  
23 (Doc. No. 35.) Having reviewed the parties' arguments, the Court finds this motion suitable  
24 for determination on the papers and without oral argument in accordance with Civil Local  
25 Rule 7.1.d.1. For the reasons set forth more fully below, the Court **GRANTS** Respondents'  
26 motion.

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## **BACKGROUND**

On March 21, 2017, Petitioner filed his first amended complaint (“FAC”). (Doc. No. 33.) In addition to Petitioner’s previous claims that he is being denied access to records under the FOIA, the Privacy Act, and the California Public Records Act, Petitioner also names nine new individual respondents: Laura E. Duffy; Crystalline Smith; Susan B. Gerson; Dennis M. Wong; Angela C. Brooks; William E. Bordley; Sean O’Neill; Christina D. Troiani; and Thomas D. Anderson (collectively referred to as “Individual Respondents”). (*Id.* at 1, 5.) On March 29, 2017, Respondents filed a motion to dismiss the Individual Respondents with prejudice. (Doc. No. 35.) Petitioner filed a non-opposition to Respondents’ motion on April 10, 2017. (Doc. No. 37.)

## **LEGAL STANDARD**

### **A. Motion to Dismiss**

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff’s complaint and allows a court to dismiss a complaint upon a finding that the plaintiff has failed to state a claim upon which relief may be granted. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “[A] court may dismiss a complaint as a matter of law for (1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim.” *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted). However, a complaint will survive a motion to dismiss if it contains “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In making this determination, a court reviews the contents of the complaint, accepting all factual allegations as true, and drawing all reasonable inferences in favor of the nonmoving party. *Cedars-Sinai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007).

## **DISCUSSION**

Respondents request that Petitioner’s FOIA and Privacy Act claims against the Individual Respondents be dismissed with prejudice. (Doc. No. 35-1 at 2.) Respondents predicate this assertion on the fact that neither the FOIA nor the Privacy Act allows suits

1 to be brought against individuals. (*Id.*) In response, Petitioner does not oppose  
2 Respondents' motion to dismiss the Individual Respondents. (Doc. No. 37 at 2.)


3 The Court finds Respondents' motion to dismiss the Individual Respondents to be  
4 appropriate. *See Drake v. Obama*, 664 F.3d 774, 785 (9th Cir. 2011) (holding that the  
5 "FOIA does not apply to any of the [d]efendants because they are all individuals, not  
6 agencies"); *see also L.A. Times Commc'n, LLC v. Dept. of the Army*, 442 F. Supp. 2d 880,  
7 892 (C.D. Cal. 2006) (stating that the FOIA provides individuals with a "judicially-  
8 enforceable right of access to government agency documents") (emphasis added) (citation  
9 omitted); *Rouse v. U.S. Dept. of State*, 567 F.3d 408, 414 (9th Cir. 2009) (holding that the  
10 Privacy Act can only be used when an agency fails to maintain any record concerning any  
11 individual) (emphasis added); *Hewitt v. Grabicki*, 794 F.2d 1373, 1377 (9th Cir. 1986)  
12 (holding that the Privacy Act only authorizes suit against an "agency"). Accordingly,  
13 finding that no plausible legal claim under the FOIA or the Privacy Act may be asserted  
14 against the Individual Respondents, the Court **GRANTS** Respondents' motion.

### 15 CONCLUSION

16 For the reasons set forth more fully above, the Court **GRANTS** Respondents'  
17 motion to dismiss Petitioner's claims under the FOIA and the Privacy Act against the  
18 Individual Respondents **WITH PREJUDICE**.

19  
20 **IT IS SO ORDERED.**

21 Dated: April 14, 2017

22   
23 Hon. Anthony J. Battaglia  
24 United States District Judge  
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